

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

FRANK BATES WHITEHEAD, III, )  
                                  )  
                                  )  
Plaintiff,                   )  
                                  )  
-vs-                           )                           NO. CIV-23-1151-HE  
                                  )  
                                  )  
OFFICER COLT LOWRY, ELK CITY )  
PD et al.,                    )  
                                  )  
Defendants.                   )

**ORDER**

Plaintiff Frank Bates Whitehead III brought this action asserting claims against Colt Lowry, an Elk City, Oklahoma, police officer and Angela C. Marsee, the District Attorney for Beckham County, State of Oklahoma. Following initial review by U. S. Magistrate Judge Shon T. Erwin and consideration of his Report and Recommendation, all claims against the defendants were dismissed except for a Fourth Amendment claim against defendant Lowry, in his individual capacity, for use of excessive force [Doc. #22]. Thereafter, defendant Lowry moved for summary judgment on the excessive force claim. On May 9, 2025, Judge Erwin issued a further Report and Recommendation recommending that the court grant Lowry's motion.

The Report and Recommendation advised plaintiff of his right to object to the Report and Recommendation by May 27, 2025. To date, plaintiff has not filed any objection. Plaintiff has therefore waived the right to appellate review of the factual and

legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10<sup>th</sup> Cir. 2010).

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #37]. Defendant Colt Lowry's Motion for Summary Judgment [Doc. #28] is **GRANTED**. The alternative Motion to Dismiss [Doc. #28] is **STRICKEN** as **MOOT**. A judgment reflecting the disposition of all claims will be entered separately.

**IT IS SO ORDERED.**

Dated this 12th day of June, 2025.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE